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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/620,826 | 07/21/2000 | Reza Majidi-Ahy | 164.1017.01 | 4409 |
| 22883 | 7590 | 02/23/2005 | EXAMINER | |
| SWERNOFSKY LAW GROUP PC P.O. BOX 390013 MOUNTAIN VIEW, CA 94039-0013 | | | JONES, PRENELL P | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2667 | |

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/620,826

Applicant(s) **OK**

MAJIDI-AHY ET AL.

Examiner

Prenell P Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-17, 35-58 and 60-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-58 and 74-97 is/are allowed.
- 6) ☒ Claim(s) 4, 6-12, 15-17, 60, 62-68 and 71-73 is/are rejected.
- 7) ☒ Claim(s) 5, 13, 14, 61, 69 and 70 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 4-17 and 35-97 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 4-17, 35-58 and 60-73 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,654,384. Although the conflicting claims are not identical, they are not patentably distinct from

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each other because the limitations of the claims in the present application are all encompassed by the claimed limitations of US Patent 6,654,384 corresponding claims as indicated above.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 4, 6-13, 15-17, 60, 62-68 and 71-73 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Raissinia et al.

Regarding claims 4, 6-13, 15-17, 60, 62-68 and 71-73, Raissinia discloses (Abstract, Figs. 1-5, col. 3, line 9 thru col. 5, line 30) a point-to-multi-point communication (asymmetric) system that includes groups of codeword (first set of parameter values/second set of parameter values) associated with OSI physical layer and MAC layer, wherein the sending of first values (Fig. 2), transferring data could be voice, video, management data or application data, producing second information regarding characteristics of a communication channel in response to a result of the steps of sending and adjusting plurality of first values (power, collision rate, error code) with respect to the second information (cols 5-8) wherein the first/second parameters of communication link are responsive to adjusting step, and (col. 8) communication link enduring

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interference effects whereby the link includes a (col. 4) plurality of separate channels using at least one or a plurality of time division.

Allowable Subject Matter

1. Claims 35-58 and 74-97 are allowed over prior art.
2. Claims 5, 13, 14, 61, 69 and 70 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. The following is an examiner's statement of reasons for indicating allowable subject matter: Although the cited prior art teaches a point-to-multi-point communication system that includes groups of codeword (first set of parameter values/second set of parameter values) associated with OSI physical layer and MAC layer, wherein the sending of first values, and producing second information regarding characteristics of a communication channel in response to a result of the steps of sending and adjusting plurality of first values (power, collision rate, error code) with respect to the second information wherein the first/second parameters of communication link are responsive to adjusting step, and communication link enduring interference effects whereby the link includes a plurality of separate channels using at least one or a plurality of time division, optimizing parameters associated with a predetermined set parameter values, optimizing parameter values based on measured performance characteristics, tuning values (optimize) for a variety of parameter types for optimizing settings, implement parameter values optimized at the same time they fail to teach or suggest obtaining characteristics of a communication system in response to a first set of values and determining a second set, optimizing plurality of communication parameters wherein time-varying adjustment

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is independent with regard to each independent communication channel, communication parameters are effective to alter aspects of each said independent channel with regard to frequency-variation, spatial-variation or time-variation, and dynamically selecting second set of values in response to characteristics/parameters, second set of values having been determined to be superior to a set of altered values having only one change to parameters, and adjusting includes calculating a newer set of values for link in response to a combination of an older set of values and an adjusted set of values.

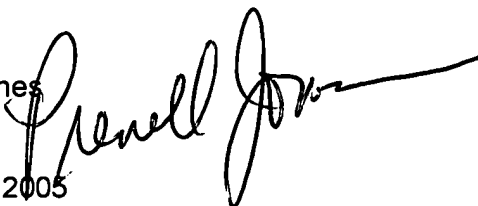
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell P. Jones whose telephone number is 571-272-3180. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Prenell P. Jones

February 16, 2005

A handwritten signature in black ink, appearing to read "Prenell Jones", written over the typed name and date.